IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

CRL.A.No. 1061 of 2002()

SC.334/1999 of ADDL.SESSIONS COURT (ADHOC-I), KASARAGOD

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APPELLANT: ACCUSED

B.SUNDARAN, SON OF BELLAN, 48/99,
AMBEDKAR COLONY, BARADUKA, BADIADKA,
KASARAGODE.

BY ADVS. SRI.A.P.CHANDRASEKHARAN (SR.)
SMT.PRABHA R.MENON
SRI.PUSHPARAJAN KODOTH
SRI.M.KRISHNAKUMAR
SRI.K.JAYESH MOHANKUMAR

RESPONDENT: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
STATE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. P.RAVEENDRA BABU

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER IN CRL.M.P.NO.8368 OF 2002 IN CRL.APPEAL NO.1061 OF 2002.

DISMISSED

30.5.2007 Sd/-(K.THANKAPPAN, JUDGE)

K.THANKAPPAN, J.

CRL. APPEAL NO. 1061 OF 2002

Dated this the 30th day of May, 2007

JUDGMENT

This appeal is filed against the judgment in Sessions Case No.334 of 1999 on the file of the Additional Sessions Court (Ad hoc - I), Kasaragod. By the impugned judgment, the appellant - accused was found guilty under Section 55(a) of the Abkari Act, he was convicted thereunder and sentenced to under rigorous imprisonment for a period of three years and to pay a fine of Rs.1,00,000/- and in default of payment of fine, to undergo rigorous imprisonment for a further period of one year.

2. The prosecution case against the appellant was that on 21.5.1999 at 6.30 p.m., he was found in possession of 25 packets each containing 100 ml. of Karnatataka made arrack without any license or permit under the provisions of the Abkari Act. He was arrested at the spot by PW.4, the Sub Inspector of Police, Badiadka who detected the crime, investigated the case and laid the final charge. PWs.1 and 3 were the attesting witnesses to Ext.P1 seizure mahazar and Ext.P2 scene mahazar

respectively. PW.2 was the police constable who had accompanied PW.4 at the time of detection of the crime. PWs.2 and 4 deposed that they had seen the appellant coming along the road with the contraband articles and that on seeing them he tried to escape from the place. On preparing Exts.P1 and P2, the contraband articles were seized from the appellant, samples were taken and sent for chemical analysis. Ext.P5 is the chemical analysis report which showed that the sample contained alcohol more than the minimum prescribed for possession by an individual. The court below relied on the evidence of PWs.1 to 4 and found that the prosecution succeeded in proving the case against the appellant.

3. Heard the learned counsel appearing for the appellant as well as the learned Public Prosecutor. After considering the entire evidence, this Court is of the view that the finding entered by the court below is based on evidence and the impugned judgment requires no interference.

4. Learned counsel appearing for the appellant submits that the appellant was found guilty as per judgment dated 26.10.2002 and he was committed to prison on that day itself. Appeal was filed on 21.11.2002 and this Court suspended the execution of sentence and ordered to release the appellant on his executing a bond for Rs.15,000/- with two solvent

sureties each for the like amount to the satisfaction of the court below. As the appellant was not in a position to execute the bond ordered by this Court, he was not released on bail. The period of imprisonment ordered against the appellant including the sentence of imprisonment for default of payment of fine was four years. The said period of four years was over on 25.10.2006. Hence, it is not proper for the jail authorities to keep the appellant in jail after the expiry of the period of imprisonment.

The Crl. Appeal is accordingly dismissed, confirming the conviction and sentence ordered by the court below. A copy of this judgment shall be communicated to the Additional Sessions Court (Ad hoc -I), Kasaragod at the earliest.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

CRL.A.NO.1061/2002

JUDGMENT

30TH MAY, 2007